

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

Minnesota Teamsters Public &
Law Enforcement Employees
Union, No. 320

UNION

-and-

BMS Case No. 06-PN-0882

Wright County, Minnesota
(Sheriff's Essential Supervisory Unit)

EMPLOYER

ARBITRATOR: Christine D. Ver Ploeg

DATE AND PLACE OF HEARING: April 20, 2007
Wright County Government Center
Buffalo, Minnesota

DATE OF RECEIPT OF POST-HEARING BRIEFS: May 11, 2007

DATE OF AWARD: June 4, 2007

ADVOCATES

For the Union

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For the Employer

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INTRODUCTION

This interest arbitration has been brought by Minnesota Teamsters Public and Law Enforcement Employees Union, Local No. 320 (hereinafter “Union”) pursuant to Minnesota’s Public Employment Labor Relations Act (PELRA), Minn Stat § 179A.16. The Union is the exclusive representative of the Non-licensed Essential Sheriff Staff Unit of the Wright County Sheriff’s Department (hereinafter “County”).

Wright County has approximately 638 employees, 8 of whom are in this bargaining unit. Other bargaining units are: the Teamsters Courthouse unit, AFSCME Human Services unit, Local 49 Highway unit, AFSCME Assistant County Attorneys unit, Teamsters Non-Licensed Essential Sheriffs Staff unit and LELS Deputies/Sergeants unit.

The parties reached impasse when bargaining their current collective bargaining agreement, and the Bureau of Mediation Services has certified the following issues for arbitration:

1. Duration - Term - Art. 22
2. Wages - Amount of Adjustment 2006 - Appendix
3. Wages - Amount of Adjustment 2007, If Any - Appendix
4. Wages - Amount of Adjustment 2008, If Any - Appendix
5. Holidays - New Section, Premium Pay - Art. 14
6. Uniform - Amount of Adjustment 2006 - Art. 13.1
7. Uniform - Amount of Adjustment 2007, If Any - Art 13.1
8. Uniform - Amount of Adjustment 2008, If Any - Art. 13.1
9. New - Legislative Reduction in Funding - New

Arbitrators who decide such issues in interest arbitration do not apply a strict formula but instead consider the evidence as a whole. Two important bases for decision are: (1) determining what the parties would likely have negotiated had they been able to reach agreement at the bargaining table; and (2) seeking to avoid awards that significantly alter a bargaining unit’s relative standing, whether internal or external, unless there are compelling reasons to do so.

Three types of evidence relevant to those two rationales are frequently presented in interest arbitration, and the parties have presented such evidence in this arbitration: evidence of the employer’s “ability to pay,” evidence of “internal comparability” and evidence of “external comparability.”

Ability to Pay

PELRA requires arbitrators in interest arbitration proceedings to consider the "obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations." Minn. Stat. § 179A.16, subd. 7. Thus, interest arbitrators do consider an employer's economic condition when deciding economic issues.

Union's evidence and argument

The Union offered evidence that the County is currently in good financial standing. March 2006 meeting minutes reflect that the state auditor views a reserve fund balance of 35-50% of total current expenditures as acceptable, and Wright County - at 37% - is within that range. Budget committee meeting minutes from July 18, 2006 indicate that the County's \$4.3 million dollar surplus for 2005 is more than 2.5x higher than the surplus from 2004. The minutes also indicate that one the reason why 2005 ended in good financial standing was because the County underestimated the money it would receive from the state for program aid, an almost \$2 million dollar difference.

According to the state auditor's report for the year 2005 (the most current data available), the County's assets exceeded its liabilities by more than \$145 million dollars, and its total net assets had increased by more than \$18 million. More than \$13 million dollars is classified as an unreserved, undesignated fund balance. These are funds that the County can spend at its discretion; they could be used to finance the Union's positions in this arbitration.

County's evidence and argument:

In 2003 the County lost approximately \$889,420 in state aids that had previously been certified, and in 2004 the State reduced the County's state aids by a cumulative amount of \$1,599,407. Although the State subsequently replenished much of the aid that was cut, the state aid to the County has not increased over time while the County's costs continue to increase. For example, the 2006 total budget decreased by 0.6% but the County levy had to increase by 11.4% to fund increased County expenditures. Labor costs of \$2,480,000 represent a significant portion of the County budget. Similarly, while the 2007 budget increased by 5.2%, the County levy increased by 9.45% to account for County expenditures.

Although the County acknowledges that its reserve fund balance is within the "acceptable" range of 35-50%, it argues that having finally reached a balance (37%) that barely

meets that standard is hardly a basis for awarding generous cost items. Moreover, looking only at the December 31 fund balance creates a false impression of affluence, for the County must rely on that balance to cover expenses during the first six months of the next fiscal year, pending receipt of the next property tax payments. Finally, there are many projects at Wright County that still need funding, including a \$50 million new jail facility. The County's fund balance does not include this financial obligation.

Comment

The above evidence has been considered in determining the cost issues in this case.

Internal Comparability

Parties present evidence of "internal comparability"--evidence of the terms and conditions of employment an employer provides its various employee groups--to demonstrate that the bargaining unit now in interest arbitration is or is not being treated equitably in comparison.

The deference traditionally given to internal comparisons in interest arbitration reflects a fundamental concern that this process not provide rewards beyond those which the parties would have secured through the collective bargaining process. As discussed above, the role of the interest arbitrator is to determine what the parties themselves would have agreed to voluntarily. To award wages and benefits greater than these employees could have negotiated, or greater than other employee groups have negotiated, risks undermining the collective bargaining process and provoking yet more interest arbitration.

Certainly it is true that one group cannot automatically be bound to others' settlement patterns. However, the fact that a pattern is uniformly maintained for almost all of a large number of employees is strong evidence that those terms are appropriate under existing conditions. Such evidence obliges an arbitrator to closely scrutinize the reasons for deviating from those terms for a select group of employees.

In addition, the Local Government Pay Equity Act (LGPEA) of 1984 on its face accords great importance to internal compensation relationships. The purpose of the law is to "eliminate sex-based wage disparities in public employment in this state." Equitable compensation relationships are achieved when "the compensation for female-dominated classes is not consistently below the compensation for male-dominated classes of comparable work value...within the political subdivision." The Act requires public employers to strive for internal consistency in employee pay rates, and imposes severe financial penalties on those who fail to do

so. In this case the County has offered credible evidence that Pay Equity considerations are currently a significant concern.

External Comparability

“External comparability” evidence--evidence which compares the employment terms and conditions of employees who perform same or similar work for different but “comparable” employers--is offered to demonstrate that the bargaining unit in interest arbitration is or is not being treated appropriately. Parties often strenuously disagree concerning the composition of the appropriate comparability group.

The Union submits that the appropriate comparison for Wright County includes the "Economic Region 7W and Contiguous Counties" comparison group of Benton, Carver, Hennepin, McLeod, Meeker, Sherburne and Stearns counties.

The County largely agrees with the Union’s comparison group, with the exception of Hennepin County.

Discussion and Decision

I agree that Hennepin County is not an appropriate comparison county due to its significantly greater population, market value, tax capacity, levy, and number of housing units. Hennepin County is a member of the DCA Stanton Group Three comparison group that consists of Ramsey County, the City of Minneapolis and the City of St. Paul. Hennepin County is not included in Economic Region 7W and has never been utilized by Wright County for market comparison purposes. Arbitrator Fogelberg has also previously agreed that Hennepin County is not an appropriate comparison to Wright County. Wright County and Teamsters Local No. 320, BMS Case No. 03-PN-902 (, 2003), p. 17, n.3.

ISSUES AT IMPASSE

Issue 1: Duration - Shall the Contract be 1, 2 or 3 years?

County Position. The County proposes a 3- year contract, effective January 1, 2006 through December 31, 2008.

Union position. The Union proposes a 2-year contract, effective January 1, 2006 through December 31, 2007.

Union's evidence and argument

A two-year contract is appropriate. No comparable data exists for the year 2008. Without that data, it is impossible to determine a fair salary increase for that year. The Union and its members should not be denied their right to negotiate wages and benefits simply because it is more convenient for the County to have all negotiations take place in the same year.

County's evidence and argument

The County argues that this bargaining unit should bargain on the same schedule as all of the other bargaining units in the County: a three-year contract schedule. To do otherwise would wreak havoc. The County challenges the Union's primary argument on this issue--that there is no comparison data for 2008—by arguing that the appropriate comparison data for 2008 is the 2.75% wage settlements reached with all other bargaining units at the County, including the Teamsters Non-Licensed Essential Sheriffs Staff unit.

Discussion and Decision

A three-year contract, effective January 1, 2006 through December 31, 2008, is consistent with the duration of all of the County's other collective bargaining agreements: the Teamsters Courthouse unit, AFSCME Human Services unit, Local 49 Highway unit, AFSCME Assistant County Attorneys unit, Teamsters Non-Licensed Essential Sheriffs Staff unit and LELS Deputies/Sergeants unit. All of those contracts are for three years. Moreover, this bargaining unit and the County have historically negotiated three-year agreements. Since 1994, they have negotiated four contracts with three-year durations and no two-year contracts.

In this case, the first contract year and almost six months of the second contract year have already elapsed. If a two-year contract is awarded, the parties will be back in negotiations within months. A three-year contract will foster labor relations stability.

Finally, arbitral precedent supports the Count's position. In Teamsters Local 320 and Wright County, BMS Case No. 03-PN-902 (Fogelberg, 2003), pp. 4-5, Arbitrator Fogelberg awarded the Sheriffs Essential Supervisory unit a three-year contract for 2003-2005 based on the County's internal pattern of three-year settlements, as well as the need for labor relations stability. See also Wright County and Law Enforcement Labor Services, Inc., BMS Case No. 06-PN-0743 (Gallagher, 2006), pp. 6-7 (arbitrator awarded the Deputy/Sergeants unit a three year contract for 2006-2008 in order to promote labor relations stability).

Issues 2-4. Wages - 1999 wage rates - Addendum A.

County Position. The County proposes to increase the salary schedule by 2.0%, 2.75% and 2.75% in 2006, 2007 and 2008, respectively.

Union position. The Union proposes to increase the salary schedule by 4.25% and 4.0% in 2006, 2007 respectively. If a three-year contract duration is awarded, the Union proposes to increase the salary schedule by 3.0% for 2008.

County's Evidence and Argument

The County argues that the traditional arbitration factors--financial considerations, internal comparisons, and external comparison--all support awarding this unit the County's uniform internal settlement pattern of 2.0%, 2.75% and 2.75% general wage increases in 2006, 2007 and 2008, respectively.

Union's Evidence and Argument

The Union premises its position upon wage comparisons with the "Economic Region 7W and Contiguous Counties" comparison group. It argues that it is appropriate to include Hennepin County in the comparison group, considering that Wright County has experienced rapid growth--ranking third in the state--in recent years. The Wright County sheriff's department is the 6th largest in Minnesota, and provides contract police services to 13 of the 16 cities in the county.

With respect to internal comparisons, the Union notes the parties' history reveals that this unit would not have agreed to the same increases that were accepted by other bargaining units, and in fact did not for two other contracts within the last ten years. Moreover, it is significant that the patrol deputies who are supervised by members of this bargaining unit are paid higher than the average among the comparable groups. It is only fair that these supervisors should be paid at least at the average, if not above. The Union's positions should also be awarded because the gap between the sergeants and lieutenants in Wright County is significantly lower than in most comparable counties.

Discussion and Decision

Ability to pay, financial considerations

The previous discussion concerning the County's financial situation ("Ability to Pay" section) has been relevant in determining the cost issues in this case. The evidence demonstrates that the County still faces considerable financial challenges, and simply because it could fund

the Union's wage proposals does not mean that it would be responsible to do so.

Internal comparisons

The County's evidence of internal comparisons is compelling. Since at least 1994, all Wright County bargaining units and non-union employees have maintained an unwavering pattern of uniform general wage adjustments. All of the other bargaining groups within the County have received the same general wage increases for 2006, 2007 and 2008 that are now proposed for this unit: 2.0%, 2.75% and 2.75%. The 2006 and 2007 wages established for non-union employees mirror this settlement pattern. This uniform settlement pattern has been established with 630 of the 638 employees at Wright County or 98.75% of the workforce.

Moreover, the County demonstrated that it is reasonably concerned about its status pursuant to the Pay Equity Act, a concern that would be aggravated by adopting the Union's wage proposal. The five classifications in this bargaining unit are all male-dominated classes of employees. The County has not yet received a compliance notice from the Department of Employee Relations relative to its January 24, 2006 Pay Equity report, and a wage award higher than the uniform pattern for this bargaining unit will further decrease the County's currently low underpayment ratio and T-Test results.

External comparisons:

For reasons previously discussed, the appropriate comparison for Wright County includes the "Economic Region 7W and Applicable Contiguous Counties" comparison group of Benton, Carver, McLeod, Meeker, Sherburne and Stearns counties. This comparison group includes all Economic Region 7W counties and all counties that are contiguous to Wright County with the exception of Hennepin County.

Wage increases of 2.0%, 2.75% and 2.75% will result in a maximum wage for the Jail Administrator, Captain-Patrol Division and Lieutenant-Patrol Division that exceeds the average maximum wage of that comparison group.

Further evidence of the County's competitiveness within the external comparison group is demonstrated by the recruitment and retention data. Vacancies in this unit are almost always filled from within as internal promotions.

The County's Lieutenant/Sergeant differential is not a sufficient basis to award the Union's position. Since 1999, when the County created the Lieutenant classification, there has always been a 8.7% differential between the maximum wage on the salary structure for the

Lieutenant classification and the Sergeant classification. The internal settlement pattern at the County maintains that 8.7% differential.

Issue #5: Holiday Pay

County Position: Maintain current contract language whereby bargaining unit members receive an additional day off if they work on a holiday.

Union position. The Union proposes holiday pay of regular pay plus time and a half.

Union evidence and argument

Bargaining unit members currently receive an additional day off if they work on a holiday. The Union requests that they be awarded the same holiday pay that the sergeants and deputies receive: regular pay plus time and a half. It is only fair that the supervisors receive the same holiday benefit as their subordinates.

Improving holiday pay would not be contrary to the bargaining unit members' exempt status under the Fair Labor Standards Act. The statute has no bearing on this issue as nothing in the FLSA requires the employer to pay any type of premium at all to an employee who works on a holiday.

Other comparable counties' supervisors receive some type of premium for holidays worked. Awarding this proposal would not break new ground; it would simply equalize a benefit between the supervisors and their subordinates.

County evidence and argument

The County argues that members of this bargaining unit are exempt employees under the FLSA and thus are ineligible for overtime compensation. Moreover, the Union's position is not supported by either internal and external comparison data.

Discussion and decision

In the last interest arbitration proceeding involving these parties (2003-2005 contract), the Union sought this same contract language. In denying the Union's request, Arbitrator Fogelberg recognized this bargaining unit's exempt status. Teamsters Local No. 320 and Wright County, BMS Case No. 03-PN-902 (Fogelberg, 2003) pp. 16-17. Moreover, this contract language has been present in the parties' collective bargaining agreement since at least 1991

Internal comparison data also supports the County's position. No other Wright County exempt employee receives premium pay for holidays worked, although the non-exempt employees they supervise are eligible for such a benefit. It is also relevant that exempt members of the Sheriffs Essential Supervisory unit enjoy a number of benefits that non-exempt members of the LELS Deputy/Sergeant unit do not enjoy, including flexibility in work schedules and the ability to self-schedule.

The County's position is also supported by the external comparison data. The majority of counties within the comparison group do not provide Sheriffs supervisory staff members with premium pay or compensatory time at the rate of time and one-half the employee's base pay for hours worked on a holiday.

. The current benefit is reasonable and appropriate under the circumstances, and there is no basis to now amend the contract.

Issues #6-8: Uniform Allowance

County Position. No increase in current uniform allowance.

Union position. The Union proposes to increase the uniform allowance to \$575, \$600, and \$625 for 2006, 2007 and 2008 respectively.

Union evidence and argument

The Union asserts the amount of the increase is particularly reasonable when considering that there are only eight members in this bargaining unit. The total difference between the Union's positions and the County's position is a mere \$520 if a two year contract is awarded, and just \$720 if a three year contract is awarded. The County's position of no increase for the life of the contract is unfair; uniform costs will increase in the next two or three years.

The supervisors wear the same uniforms as the sergeants and deputies. The Union is actually asking for less than what that bargaining unit receives - \$600 in 2006, \$625 in 2007, and \$650 in 2008. The sergeants and deputies will see an 18% increase in the uniform allowance during the life of their contract. That is a slightly higher percentage increase than this bargaining unit would receive if the Union's final positions were awarded (17%).

County's evidence and argument

The fact that in 2006 five of the eight members of the Sheriff's Essential Supervisory unit did not fully utilize the current allowance demonstrates that maintaining the current uniform

allowance of \$535 through the duration of the 2006-2008 contract is reasonable. This is an economic item that must be considered in the context of total package cost.

Discussion and Decision

Even if some members of the unit do not use the full amount of the uniform allowance every year, some do. The internal comparisons, coupled with the fact that bargaining unit members are judicious in their use of this benefit, supports awarding this reasonable benefit.

Issue 9: New Language Regarding Legislative Funding

County Position. The County proposes to add the following new language:

“In the event that the Minnesota legislature withholds or eliminates County Program Aid (CPA), freezes the property tax levy or otherwise restricts the ability of the County to raise revenues through property taxation, there shall be no general wage adjustment and the wage schedule will be retained at the previous year's level for the years impacted by such action.”

Union position. The Union proposes that no such language be added to the contract.

County evidence and argument

Based on the County's experiences as a result of the 2003 legislative session, the County has proposed new contract language to protect it in the event the legislature withholds or eliminates state aid, freezes the property tax levy or otherwise restricts the ability of the County to raise revenues through property taxation. The County urges that such contract language would provide a safety net in the event resources are not available to fund wage increases.

Union's evidence and argument

The County bears the burden of proving that there is a need for the inclusion of this language and that it is reasonable. It has not met that burden.

Discussion and Decision

The County's proposed language is unprecedented. No other County collective bargaining agreement contains such language. Furthermore, this language would be contrary to state law. Under PELRA, employees have the right to negotiate terms and conditions of employment, and employers are likewise obligated to negotiate with them. Minn.Stat. §179A.07, subd. 2. The

County's proposed language would deny the members of this bargaining unit the right to negotiate their wages and benefits in the future.

This same proposal was rejected by Arbitrator Fogelberg in the 2003 arbitration for this unit for the same reasons that the Union argues in this case.

AWARD

For the above reasons, the following is awarded:

10. Duration - Term - Art. 22: The contract shall be for 2006, 2007 and 2008
11. Wages - Amount of Adjustment 2006 – Appendix: 2.0%
12. Wages - Amount of Adjustment 2007, If Any – Appendix: 2.75% H
13. Wages - Amount of Adjustment 2008, If Any – Appendix: 2.75%
14. Holidays - New Section, Premium Pay - Art. 14: No change
15. Uniform - Amount of Adjustment 2006 - Art. 13.1: \$40 (Total \$575)
16. Uniform - Amount of Adjustment 2007 - Art. 13.1: \$25 (Total \$600)
17. Uniform - Amount of Adjustment 2008 - Art. 13.1: \$25 (Total \$625)
18. New - Legislative Reduction in Funding –Not adopted

June 4, 2007



Christine Ver Ploeg, Arbitrator